

W. 3026

No. 15448

United States
Court of Appeals
For the Ninth Circuit

JOAN DE VIGIL,

Appellant,

VS.

GENERAL ACCIDENT FIRE & LIFE ASSUR-
ANCE CORPORATION, LIMITED, a British
Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Hawaii

FILED

APR - 5 1957

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For the Plaintiff, Joan De Vigil,

HYMAN M. GREENSTEIN, ESQ.,
400 So. Beretania St.,
Honolulu, T. H.

For the Defendant, General Accident Fire & Life
Assurance Corporation, Limited,

MILLARD D. WHITE, ESQ.,
313 McCandless Building,
Honolulu, T. H.



In the United States District Court for the
District of Hawaii

Civil No. 1432

JOAN DE VIGIL,

Plaintiff,

vs.

GENERAL ACCIDENT FIRE & LIFE ASSUR-
ANCE CORPORATION, LIMITED, a British
Corporation,

Defendant.

PETITION FOR REMOVAL

The petition of General Accident Fire and Life Assurance Corporation, Limited respectfully shows:

1. That an action has been brought by plaintiff, above named, against defendant, above named, in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii as Civil No. 839 and is now pending therein;

2. That said action is a civil action of which the District Courts have original jurisdiction and that the amount in controversy exceeds the sum of Three Thousand and no/100 Dollars (\$3,000.00) exclusive of costs and interest;

3. That a certified copy of the said Complaint and Summons (with attachments) is attached hereto and marked "Exhibit A" and by reference made a part hereof;

4. That the Petitioner herein appears specially and solely for the purpose of removing said cause to the United States District Court in and for the District of Hawaii upon the ground and for the reason that the above action involves a conflict which is wholly between a citizen of the Territory of Hawaii and one of a foreign jurisdiction, in that Joan De Vigil, in the words of her Complaint herein, was, at the time of commencement of said suit, and still is a resident of the City and County of Honolulu, Territory of Hawaii, temporarily sojourning in the State of Colorado, and that the Defendant is a foreign corporation, organized under the laws of the United Kingdom of Great Britain and domiciled in Perth, Scotland, United Kingdom;

5. That defendant, General Accident Fire and Life Assurance Corporation, Limited, was served with a copy of Summons on April 26, 1955, and that twenty (20) days have not elapsed since said service;

6. That your Petitioner files herewith a good and sufficient bond made and conditioned as the law directs, and that payment will be made of costs and disbursements incurred by reasons of these removal proceedings if the Court shall determine that the action was not removable or was improperly removed thereto.

Wherefore, Petitioner prays that the said case be removed from the said Circuit Court of the Territory of Hawaii into this Court for trial and deter-

mination, and thereupon proceed as a cause originally commenced herein.

Dated at Honolulu, Hawaii, this 3rd day of May, 1955.

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED,

By /s/ MILLARD D. WHITE,
Its Attorney.

Duly verified.

[Title of District Court and Cause.]

REMOVAL BOND

Know All Men by These Presents:

That General Accident Fire and Life Assurance Corporation, Limited, as principal, by Millard D. White, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound to Joan De Vigil, plaintiff in the above-entitled cause, her heirs, executors, administrators and assigns in the sum of Five Hundred and No/100 (\$500.00) Dollars lawful money of the United States for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our successors and assigns, jointly and severally by these presents.

Whereas, defendant General Accident Fire and Life Assurance Corporation, Limited, has applied

by petition to the United States District Court for the District of Hawaii for the removal of a certain case pending in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii wherein Joan De Vigil is plaintiff, and General Accident Fire and Life Assurance Corporation, Limited is defendant, to the United States District Court for further procedure on the ground set forth in said petition:

Now, Therefore, the condition of the obligation is such that if Petitioner in said removal action, defendant above named, shall pay all costs and disbursements incurred by reason of the removal proceeding if it should be determined that the cause was not removable or was improperly removed to the District Court then this obligation shall be void; otherwise it shall remain in full force and effect.

In Witness Whereof, we, the principal and surety, have caused our hands and seals to be affixed hereto this 3rd day of May, 1955.

GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED,

By /s/ MILLARD D. WHITE,
Its Attorney, Principal.

[Seal] FIDELITY AND DEPOSIT
COMPANY OF MARYLAND;

By /s/ ALBERTA CUNHA,
Its Attorney in Fact, Surety.

Duly verified.

EXHIBIT A

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii

Civil No. 839

JOAN DE VIGIL,

Plaintiff,

vs.

GENERAL ACCIDENT FIRE & LIFE ASSUR-
ANCE CORPORATION, LIMITED, a British
Corporation,

Defendant.

COMPLAINT

To the Honorable, the Presiding Judge of the
Above-Entitled Court:

Comes now Joan De Vigil, plaintiff above named,
by her attorney Hyman M. Greenstein, and com-
plaining of the defendant above named, for cause of
action alleges as follows:

I.

That plaintiff was at all times mentioned herein
and still is a resident of the City and County of
Honolulu, Territory of Hawaii, and is presently
temporarily sojourning in the State of Colorado.

II.

That defendant was at all times mentioned herein
and still is a foreign corporation, organized under
the laws of the United Kingdom of Great Britain

and domiciled in Perth, Scotland, United Kingdom, and was at all times mentioned herein and still is an insurance carrier duly authorized to transact business in and to issue policies of automobile liability insurance in the Territory of Hawaii, through its general agent, National Mortgage and Finance Company, Limited, a Hawaiian corporation.

III.

That this action is based upon the provisions of Sec. 7421(f), Revised Laws of Hawaii, 1945, as amended by Act 393, Session Laws of Hawaii, 1949, and known as the Motor Vehicle Safety Responsibility Act.

IV.

That on or about the 11th day of October, 1953, in Honolulu aforesaid, plaintiff suffered certain severe, painful, disfiguring and disabling personal injuries as a direct result of an automobile accident caused by the negligent operation by one Fred A. Meyers, of Honolulu aforesaid, of a certain Chevrolet automobile, then belonging to and being driven by the said Fred A. Meyers.

V.

That at the time and place that plaintiff received said injuries, as set forth above, there was in existence and in full force and effect a certain policy of automobile liability insurance, the same being policy No. 1 A 2643289 issued by the defendant, General Accident Fire & Life Assurance Corporation, Limited, whereby said defendant agreed for a valuable consideration to pay, within the limits of liability in

said policy, which limits are to the plaintiff unknown at this time, any final judgment which should be rendered against the said Fred A. Meyers, arising out of his negligent operation of said Chevrolet automobile.

VI.

That thereafter, on the 19th day of October, 1953, the defendant, by and through its agent, the National Mortgage and Finance Company, Limited, a Hawaiian corporation, pursuant to the provisions of Section 7405(c) of the Session Laws of Hawaii, 1949, filed in the office of the Chief of Police of the City and County of Honolulu, Territory of Hawaii, a notice in writing containing the following statement:

“Date of accident: October 11, 1953.

“Place of accident: 1671 Kalakaua Ave., Honolulu, T. H.

“The company signatory hereto gives notice that its policy numbered 1 A 2643289 issued to Fred A. Meyers, c/o Island Hotel, 351 Seaside Avenue, Honolulu, T. H. is an automobile liability policy approved by the commissioner of insurance or an automobile liability policy acceptable to him, affording limits of \$5000/\$10,000 bodily injury and \$1000 property damage, which policy was in effect on the date of the above-described accident.”

Said statement was signed by the defendant as the insurance company and by the National Mortgage & Finance Company, Limited, as general agent and by

one Arthur Brown, as the authorized representative of the above-named corporations.

VII.

That on January 7, 1954, a second statement, identical in every respect to the statement described in Paragraph VI, above, excepting that the address of the said Fred A. Meyers was shown as "c/o Pacific Roofing Co., Honolulu" was filed by the defendant in the same place and manner as described in Paragraph VI, above.

VIII.

That on October 30, 1953, the defendant received actual notice in writing from the said Fred A. Meyers that the plaintiff was asserting a claim against him as a result of said accident.

IX.

That on April 26, 1954, the plaintiff filed an action at law against the said Fred A. Meyers in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, said action being identified as Law No. 23532, wherein the plaintiff claimed damages for personal injuries suffered by her as a result of that certain automobile accident referred to in Paragraphs IV, VI and VIII, above.

X.

That on or about May 4, 1954, the plaintiff having been unable to find the said Fred A. Meyers to serve him with process in the above-described action, the plaintiff, through her attorney, requested the defendant herein through its agent, one Kaname

Shimazu, a claims adjuster employed by the defendant's general agent, National Mortgage & Finance Co., Ltd., to accept service of process in said action on behalf of said Fred A. Meyers, or to aid the plaintiff in locating the said Fred A. Meyers in order that he could be served with process. Both of the foregoing requests were refused by the defendant herein.

XI.

That thereafter, on May 13, 1954, the said Fred A. Meyers was personally served with process in the said action, in due form of law, in Honolulu aforesaid, and on June 14, 1954, no answer or other pleadings having been filed by the said Fred A. Meyers or on his behalf, an order of default was duly entered in the said action.

XII.

That thereafter, on June 25, 1954, the plaintiff, through her attorney, informed the defendant, through its authorized representative, one Arthur Brown, a claims adjuster, that the order of default mentioned above had been entered and inquired of him if he wished to make an offer to settle the plaintiff's claim, but the defendant, through the said Arthur Brown, absolutely refused to make any offer or take any action whatsoever toward settlement of plaintiff's claim.

XIII.

That thereafter, on November 12, 1954, the plaintiff proved her damages by competent and credible evidence in open court in the said action and on

November 16, 1954, a judgment in favor of the plaintiff against the said Fred A. Meyers in the total sum of \$7,568.95 was duly entered in the said action, Law No. 23532, which judgment is final and has not been appealed, and no part of which has been satisfied.

XIV.

That thereafter, on November 20, 1954, the plaintiff, through her attorney, presented a certified copy of said judgment to the defendant herein and made demand in writing of said defendant for immediate payment of the full amount of said judgment or for such portion thereof as was provided for under the terms of defendant's policy of automobile liability insurance covering the judgment debtor, Fred A. Meyers, thereupon the defendant herein refused and failed to satisfy said judgment, or any part thereof, or to make any payment thereunder to the plaintiff whatsoever, and still refuses and has failed so to do.

Wherefore, Plaintiff demands judgment against the defendant herein for the sum of \$7,568.95, plus interest, costs and a reasonable attorney's fee or statutory attorney's commissions as provided by law.

Dated at Honolulu, Hawaii, this 25th day of April, 1955.

[Seal] /s/ HYMAN M. GREENSTEIN,
Attorney for Plaintiff.

[Endorsed]: Filed April 25, 1955.

[Endorsed]: Filed May 4, 1955.

[Title of District Court and Cause.]

ANSWER

Defendant above named, in answer to the complaint filed in the above-entitled court and cause, says:

First Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

Second Defense

Defendant admits the allegations contained in paragraphs I, II, III and IV of the complaint.

Answering paragraph V of plaintiff's complaint, defendant admits the existence of automobile liability policy No. 1 A 2643289, but denies the remaining allegations of said paragraph and respectfully alleges that in truth and in fact said automobile liability policy was subject to certain conditions subsequent which the said Fred A. Meyers failed to perform.

Defendant admits the material allegations of paragraphs VI, VII, VIII, IX, X, XI, XII, XIII and XIV of the complaint.

Third Defense

Defendant alleges that, by said automobile liability policy No. 1 A 2643289 as issued by the defendant, and accepted by the insured, it was provided that compliance with following provision was and is a condition of liability:

“Condition 7. Notice of Claim or Suit. If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.”

That Fred A. Meyers, the insured named in said automobile liability policy No. 1 A 2643289, issued as aforesaid, was, on May 13, 1954, personally served with process in connection with an action filed by plaintiff against said Fred A. Meyers in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, therein identified as Law No. 23532, and wherein plaintiff claimed damages resulting from operation of the insured automobile; that said Fred A. Meyers failed to forward the insurance carrier a copy of the summons and process served on him in said suit as required by the provision of said policy, and on June 14, 1954, permitted an order of default to be entered against him therein; that by virtue of said breach of said contract by him as said insured, plaintiff was and is barred from recovering on said policy or by reason of said policy against this defendant.

Fourth Defense

That the provisions of Section 7421(f) Revised Laws of Hawaii, 1945, as amended by Act 393, Session Laws of Hawaii, 1949, and known as the Motor Vehicle Responsibility Act, seeks to deprive the defendant of its property without due process of law and denies the defendant the equal protection of the laws in violation of its rights under the Fourteenth

Amendment of the Constitution of the United States.

Fifth Defense

The automobile liability policy herein sued on is not a policy which had been executed in accordance with the provisions of Chapter 138, Revised Laws of Hawaii, 1945, as amended by Act 393, Session Laws of Hawaii, 1949, and known as the Motor Vehicle Responsibility Act.

Wherefore, defendant prays judgment that it be dismissed with its costs herein incurred.

Dated: Honolulu, Hawaii, June 3rd, 1955.

/s/ M. D. WHITE,
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 3, 1955.

[Title of District Court and Cause.]

PRETRIAL ORDER

Nature of Proceedings

This is an action against the insurer under an automobile liability insurance policy to recover of the insurer the amount of an unpaid judgment rendered in favor of the plaintiff and against the driver of the vehicle insured by defendant.

Admitted Facts

The following facts are admitted and require no proof:

1. That the plaintiff was, at the time of the commencement of this action, a citizen and resident of the Territory of Hawaii; that the defendant was a foreign corporation, organized under the laws of the United Kingdom of Great Britain; that the amount in controversy exceeds the sum of \$3,000.00 exclusive of costs and interest; and there is a diversity of citizenship between plaintiff and defendant.

2. That on or about October 11, 1953, in Honolulu, plaintiff was injured in an accident as a result of the negligent operation by one Fred A. Meyers of his motor vehicle.

3. That at the time of said injury, there was in full force and effect a certain policy of automobile liability insurance, issued by the defendant wherein defendant agreed to pay within the limits of said policy any final judgment which should be rendered against said Fred A. Meyers arising out of his negligent operation of his motor vehicle.

4. That at the time of said accident, there was in full force and effect a law of the Territory of Hawaii, being entitled "Motor Vehicle Safety Responsibility Act," Act 393, Session Laws of the Territory of Hawaii, 1949, Chapter 140, Revised Laws of Hawaii, 1945, amended, which among other things requires the driver of a motor vehicle, following being involved in a motor vehicle accident, to give

proof of financial responsibility or establish that at the time of such accident he had in effect an automobile liability policy with respect to the motor vehicle involved in such accident. (Sec. 7404-7406 RLH 1945 amended.)

5. That on October 19, 1953, the defendant, by and through its agents, the National Mortgage and Finance Company, Limited, a Hawaiian corporation, pursuant to the provisions of Section 7405 (c) of the Session Laws of Hawaii, 1949, (Motor Vehicle Safety Responsibility Act), filed in the office of the Chief of Police of the City and County of Honolulu, Territory of Hawaii, a notice in writing containing the following statement:

“Date of accident: October 11, 1953.

“Place of accident: 1671 Kalakaua Ave., Honolulu, T. H.

“The company signatory hereto gives notice that its policy numbered 1 A 2643289 issued to Fred A. Meyers, c/o Island Hotel, 351 Seaside Avenue, Honolulu, T. H., is an automobile liability policy approved by the commissioner of insurance or an automobile liability policy acceptable to him, affording limits of \$5000/\$10,000 bodily injury and \$1000 property damage, which policy was in effect on the date of the above-described accident.”

6. That the insured, Meyers, complied with Condition 6 of the automobile liability policy, involved herein, relating to the giving of notice of accident.

7. That on April 26, 1954, plaintiff filed an action against said Meyers, in the Circuit Court of the

First Judicial Circuit of the Territory of Hawaii, said action being numbered Law No. 23532 wherein plaintiff claimed damages for personal injuries sustained in said aforementioned accident.

8. That plaintiff, at first was unable to locate said Meyers, and on May 4, 1954, requested defendant to accept service of process on behalf of said Meyers. That defendant refused.

9. That on May 13, 1954, said Meyers was personally served with summons.

10. That Meyers failed to comply with Condition 7 of said automobile liability policy in failing to forward any suit papers to the defendant.

11. That no answer or other pleadings were filed by Meyers or on his behalf, and that on June 14, 1954, an order of default was entered against him in said action.

12. That on November 12, 1954, plaintiff was awarded a judgment against Meyers in the total sum of \$7,568.95; that said judgment is a final judgment; and that no part of same has been paid.

13. That on November 20, 1954, demand for payment of said judgment was made upon defendant. That defendant has refused to pay the same or any part thereof.

14. That Section 7421(f)(1) of said Motor Vehicle Safety Responsibility Act provides:

“(1) The liability of the insurance carrier with respect to the insurance required by this part shall

become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;”

Plaintiff's & Defendant's Contentions of Fact

1. There are no issues of fact herein—the only question is one of law.

Plaintiff's Contentions of Law

1. That under the Hawaii Motor Vehicle Safety Responsibility Act the liability of the defendant became absolute upon plaintiff obtaining a final judgment against the assured.

Defendant's Contentions of Law

1. Defendant's theory is that the policy carried by Meyers was not a motor vehicle liability policy as contemplated by the Act, hence, the insurer is entitled to plead its policy defenses.

Plaintiff's Counter Contention of Law

1. That by filing in the office of the Chief of Police a notice of insurance coverage, in compliance with the Act, the defendant waived any claim to the effect that this policy was not executed in accordance with the Act.

Point of Law at Issue

1. Under the admitted facts of this case, is the defendant liable?

Dated at Honolulu, Hawaii, this 14th day of June, 1956.

/s/ HYMAN M. GREENSTEIN,
Attorney for Plaintiff.

Approved:

/s/ M. D. WHITE,
Attorney for Defendant.

It Is Hereby Ordered that the foregoing constitutes the pretrial order in the above-entitled cause.

/s/ LON WIIG,
U. S. District Judge.

[Endorsed]: Filed June 21, 1956.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT
BY DEFENDANT

Defendant moves the Court as follows:

That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendant's favor dismissing the action, on the ground that there is no genuine issue as to any material fact and that defendant is entitled to a judgment as a matter of law;

This motion is based upon the records and files herein, the pretrial order filed June 21, 1956, and the authorities submitted by plaintiff and defendant.

Dated: Honolulu, T. H., this 29th day of October, 1956.

/s/ M. D. WHITE,
Attorney for Defendant.

[Endorsed]: Filed October 29, 1956.

[Title of District Court and Cause.]

RULING ON MOTION FOR SUMMARY JUDGMENT

Defendant insurance company moves for a summary judgment in plaintiff's action, which is based on a judgment recovered against one Fred A. Meyers, an assured under one of defendant's automobile liability policies. The motion is predicated upon a stipulated fact "that Meyers failed to comply with Condition 7 of said automobile liability policy in failing to forward any suit papers to the defendant."

Plaintiff, while a passenger in Meyers' automobile, suffered injuries in an automobile accident in Honolulu, Hawaii, on October 11, 1953. Later that month, Meyers notified the defendant in writing that plaintiff was asserting a claim against him as a result of the accident. Plaintiff subsequently filed an action for damages against Meyers in the Circuit

Court of the Territory of Hawaii and recovered judgment against Meyers for a substantial sum of money. Although the defendant had knowledge of this action, Meyers failed to forward the complaint and summons to the defendant as required by his policy.

First, plaintiff urges that Meyers' failure to perform a condition in the insurance policy is not a defense because § 7421(f), Revised Laws of Hawaii, 1945, as amended, declares that in any policy embraced by that section the insurance company's responsibility is absolute. Section 7421(f) applies to "every motor vehicle liability policy," which is defined as "an owner's or an operator's policy of liability insurance, certified as provided in section 7419 or section 7420 as proof of financial responsibility * * *" The Hawaii financial responsibility law¹ is not applicable to the policy in question because Meyers was not required by that statute, or any other statute of Hawaii, to obtain an automobile liability policy. In common with other citizens, Meyers was entitled to one serious accident before the financial responsibility law restricted his use of the public highways.

Secondly, plaintiff contends that Meyers' insurance policy was "required" under the financial responsibility law because § 7405 authorizes the Chief of Police to suspend an operator's license after his first accident unless the operator comes

¹Chapter 140, Revised Laws of Hawaii, as amended.

within certain exceptions. One exception is to have in effect at the time of the accident an automobile liability policy covering the vehicle involved in the accident. Such coverage is purely voluntary on the owner's part. The fact that it serves to avoid suspension of the operator's license in the event of an accident does not mean that it was required under the statute.

Since the Supreme Court of Hawaii has not passed on a similar factual situation, it would appear that the following general rule is applicable:

“While, in the absence of express statutory provision to the contrary, failure to give notice or to forward process to the insurer, or other lack of co-operation by the insured, constitutes a good defense to an action by an injured member of the public against the insurer under a voluntary liability insurance policy or bond which stipulates that the insured shall thus co-operate, a different rule prevails where the policy or bond was issued in compliance with a compulsory liability insurance statute, in such case the defense of lack of co-operation being ineffective, except where the particular accident or person was not within the coverage of the statute or ordinance. This rule develops from the fact that the purpose of such a statute or ordinance is to benefit or protect injured members of the public * * *

“The general rule has been held applicable, whether the policy was procured in compliance with a general compulsory liability insurance law or fi-

nancial responsibility act * * * (31 A.L.R. 2d 646, 647).”

Plaintiff's reliance on *Watson vs. Royal Indemnity Co.*, 56 F. 2d 409 (S.D. Ala. 1932), which contained language supporting her contentions, is unauthoritative because on appeal the trial court was reversed. In *Royal Indemnity Co. vs. Watson*, 61 F. 2d 614, 616 (5th Cir. 1932), the court said:

“We are of opinion that the admitted failure to comply with the condition of the policy, requiring an assured promptly to forward or cause to be forwarded to the insurance company or its designated agent a copy of the summons and complaint served upon him by appellee, precludes any recovery in this case, unless it be shown that appellant waived that condition * * * It is held by the overwhelming weight of authority that an assured who has breached this important condition cannot recover unless there has been a waiver, and that the rights of a third person can rise no higher than, but are dependent upon, the rights of the assured.”

The record in this case fails to support plaintiff's claim that performance of the “forwarding of all suit papers” condition was waived. Although the defendant insurance company had written notice of a potential claim against Meyers and was aware of the fact that plaintiff had filed an action against him, the company was not required to defend its assured because of his failure to comply with Condition 7 of the policy.

The motion for summary judgment is granted.

Dated at Honolulu, Hawaii, this 28th day of December, 1956.

/s/ LON WIIG,

United States District Judge.

[Endorsed]: Filed December 28, 1956.

In the United States District Court
for the District of Hawaii

Civil No. 1432

JOAN DE VIGIL,

Plaintiff,

vs.

GENERAL ACCIDENT FIRE & LIFE ASSUR-
ANCE CORPORATION, LIMITED, a British
Corporation,

Defendant.

SUMMARY JUDGMENT

Whereas, a motion for summary judgment by defendant came on to be heard the 13th day of November, 1956, and the Court having considered the same and filed herein its ruling thereon,

It Is Hereby Ordered, Adjudged and Decreed that judgment in favor of defendant and against the plaintiff be entered dismissing the within action.

Dated: Honolulu, T. H., this 8th day of January, 1957.

/s/ LON WIIG,

United States District Judge.

[Endorsed]: Filed and entered January 9, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Joan De Vigil, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Summary Judgment filed and entered the 9th day of January, 1957, in favor of defendant and against the plaintiff dismissing the within action.

Dated at Honolulu, T. H., this 16th day of January, 1957.

HYMAN M. GREENSTEIN, and
ROBERT A. FRANKLIN,

Attorneys for Appellant;

By /s/ HYMAN M. GREENSTEIN.

Receipt of copy acknowledged.

[Endorsed]: Filed January 17, 1957.

[Title of District Court and Cause.]

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF HAWAII IN CIVIL No. 1432

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That Joan De Vigil, as principal, and Continental Casualty Company, as surety, are held and firmly bound unto General Accident Fire & Life Assurance Corporation, Limited, a British Corporation, in the full and just sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said General Accident Fire & Life Assurance Corporation, Limited, its successors and assigns; to which payment, well and truly to be made, we bind ourselves, our successors, assigns, heirs, executors and administrators, jointly and severally by these presents.

Whereas, on January 9, 1957, in an action depending in the United States District Court for the District of Hawaii, between Joan De Vigil as plaintiff and General Accident Fire & Life Assurance Corporation, Limited, as defendant, a Summary Judgment was rendered and entered against the said plaintiff, and the said plaintiff having filed a notice of appeal from such summary judgment to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, the condition of this obligation is such, that if the said Joan De Vigil shall prosecute her appeal to effect and shall pay costs if the appeal

is dismissed or the judgment affirmed, or such costs as the said Court of Appeals may award against the said Joan De Vigil if the judgment is modified, then this obligation to be void; otherwise to remain in full force and effect.

In Witness Whereof, the above bounden Principal and Surety have hereunto set their hands and seals this 8th day of February, 1957.

JOAN DE VIGIL,
Plaintiff,

By HYMAN M. GREENSTEIN;

By /s/ HYMAN M. GREENSTEIN,
Her Attorney, Principal.

[Seal] CONTINENTAL CASUALTY
COMPANY,

By /s/ MASAYUKI TOKIOKA,
Its Attorney-in-Fact.

By /s/ MORITO TSUGAWA,
Its Attorney-in-Fact, Surety.

[Endorsed]: Filed February 8, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do

hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Pages 1 to 41, consists of a statement of the names and addresses of the attorneys of record and of the various original pleadings as hereinbelow listed and indicated:

Petition for Removal, Removal Bond and Copies of Process and Pleadings. (Certified copy of Complaint and Summons.)

Answer.

Pretrial Order.

Motion for Summary Judgment by Defendant and Notice of Motion.

Ruling on Motion for Summary Judgment.

Summary Judgment.

Notice of Appeal.

Bond for Costs on Appeal.

Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of February, 1957.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, U. S. District Court,
District of Hawaii.

[Endorsed]: No. 15448. United States Court of Appeals for the Ninth Circuit. Joan De Vigil, Appellant, vs. General Accident Fire & Life Assurance Corp., Limited, a British Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed February 18, 1957.

Docketed: February 25, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15448

JOAN DE VIGIL,

Appellant,

vs.

GENERAL ACCIDENT FIRE & LIFE ASSUR-
ANCE CORPORATION, LIMITED, a British
Corporation,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

The points upon which the appellant intends to rely on this appeal are as follows:

1. The court erred in granting the Motion for Summary Judgment.

2. The court erred in ruling that the Hawaii Financial Responsibility Law, Chapter 140, Revised Laws of Hawaii, 1945, as amended, was not applicable to the insurance policy in question in this case.

3. The court erred in ruling that the appellee was not required to defend its assured because of his failure to comply with Condition 7 of the policy.

4. The court erred in failing to consider appellant's claim that appellee waived any claim to the effect that its policy was not executed in accordance

with the Hawaii Financial Responsibility Law by filing with the Chief of Police a notice of insurance coverage.

Dated at Honolulu, Territory of Hawaii, this 7th day of February, 1957.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellant.

[Endorsed]: Filed February 18, 1957.